BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **03.10.2024**

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.(MD)Nos.21541 & 21542 of 2016
and
W.M.P.(MD).Nos.15402, 15403, 15404 & 15405 of 2016

V.Jagannathan ... Petitioner in WP(MD)No.21451/2016

T.Soundararajan ... Petitioner in WP(MD)No.21452/2016

Vs.

1.The Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai.

2.The Executive Officer / Joint Commissioner,
Arulmigu Dhandayuthapani Swami Thirukoil,
Palani,
Dindigul District. ... Respondents in both petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Cetirorari, calling for the records in pursuant to the impugned order passed by the second respondent in Se.Mu.Na.Ka.No. 437/13/G1, dated 31.03.2016 and the consequential order passed in Na.Ka.No. 437/13/G1, dated 22.10.2016 and quash the same.

Appearance in both petitions:-

For Petitioners : Mr.M.Karthikeya Venkatachalapathy

For R-1 : Mr.K.S.Selvaganesan
Additional Government Pleader

For R-2 : Mr.R.Murali
Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging very similar impugned orders both dated 31.03.2016 passed by the second respondent calling upon the respective petitioners to pay certain sums of money on account of the loss of Panchamirtham pet bottles, while in transit from the foothills to the hill of Palani temple.

2. The respective petitioners have challenged the impugned orders on the following grounds:

(a) Show cause notices were issued to the respective petitioners by an incompetent authority. According to the respective petitioners, as per Section 90(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the show cause notice ought to have been issued only by the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner. Whereas in the instant case, the show cause notices were issued by the Executive Officer of the temple, who is not a competent authority;

(b) The basis for arriving at the sums payable by the respective petitioners under the impugned orders has not been disclosed in the impugned orders. According to the respective petitioners, the sums claimed in the impugned orders is arbitrary and illegal and they are not liable to pay the same;

(c) Even though audit objections, which is the basis for initiating the proceedings against the respective petitioners for recovery of the loss caused to the temple does not disclose the names of the respective petitioners, the respondents have arbitrarily and illegally initiated action against the petitioners, which resulted in passing of the erroneous impugned orders.

3. A counter affidavit has been filed by the respondents reiterating the contents of the impugned orders. They would also submit that only by following the due procedure, the impugned orders have been passed.

4. As seen from the impugned orders, it does not disclose as to how the respondents arrived at the figure mentioned in the impugned orders, which is the sum claimed by the respondents from the petitioners.

5. The learned standing counsel appearing for the second respondent would submit that since the total loss caused to the second respondent temple was in excess of Rs.10,00,000/-, the said amount was divided by five, since five persons were involved in causing loss to the second respondent temple and the surcharge proceedings were initiated by the second respondent temple against all of them. According to him, only in equal proportions, the sum was divided and therefore, the sum disclosed in the impugned orders, which is due and payable by the respective petitioners is correct. He would also submit that under normal circumstances, audit objections will not disclose the persons, who were involved in causing loss to the second respondent temple and therefore, the ground raised by the respective petitioners that audit objection does not disclose that the respective petitioners were involved in the commission of tampering of records as well as for misappropriation will not absolve the respective petitioners' liability to pay for the loss caused to the second respondent temple.

6. Admittedly, in the impugned orders, the basis for arriving at the sums payable by the respective petitioners in respect of the loss caused to the second respondent temple is not disclosed. Arbitrarily, the second respondent has fixed certain sums of money as the amount payable by the respective petitioners out of the total loss of Rs.10,00,000/- caused to the second respondent temple.

7. The petitioners categorically contend that the petitioners were working as Assistants in the second respondent temple. They categorically contend that they are no way responsible for the charges levelled against them in the surcharge proceedings. The respective petitioners along with three others are charged under the surcharge proceedings. The superior officer alleged to be involved in the commission of misappropriation and tampering of records and loss of pet bottles is the Superintendent.

8. As per Section 90 (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, any show cause notice will have to be issued only by the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner. Whereas in the case on hand, the show cause notices have been issued to the respective petitioners by the Executive Officer of the second respondent temple. Even in the explanation submitted by the respective petitioners to the show cause notices, the respective petitioners have categorically denied that they were involved in the delinquency.

9. Since the show cause notices were issued by the Executive officer of the second respondent temple and not by the Commissioner, Joint Commissioner, Deputy Commissioner and Assistant Commissioner and in view of the fact that under the impugned orders, the details as to how the respondents had arrived at the sums disclosed in the impugned orders, which is payable by the respective petitioners are not disclosed and in view of the fact that the contentions raised by the petitioners in these writ petitions have not been considered and being non-speaking orders, the impugned orders are hereby quashed and the matter is remanded back to the second respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing to the respective petitioners and by adhering to the provisions of Section 90 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The second respondent is directed to initiate fresh action against the respective petitioners in accordance with law by following the procedure as contemplated under Section 90 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above direction, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

03.10.2024

NCC:yes/no
Index:yes/no
sm

To:

1.The Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai.

2.The Executive Officer / Joint Commissioner,
Arulmigu Dhandayuthapani Swami Thirukoil,
Palani,
Dindigul District.

ABDUL QUDDHOSE, J.

sm

Common Order made in
W.P.(MD).Nos.21541 & 21542 of 2016

Dated:
03.10.2024